

### **Mining \$1.5 Billion in Reclamation Fund Untapped Despite Growing List of Abandoned Mines**

Since 1977, the federal government has collected fees on every ton of coal mined in the United States for the purpose of funding environmental projects on lands abandoned or inadequately restored by mining companies.

Over the past 25 years, the program, known as the Abandoned Mine Reclamation Fund, has restored 180,000 acres of mining land that had been abandoned before 1977. Under the auspices of the Department of the Interior, 23 states and three Indian tribes have established programs to remediate mine wastes and restore scarred lands, clean up water pollution, and remove dangerous highwalls and other safety hazards responsible for hundreds of deaths and injuries each year.

Despite those gains, the amount of former mining land considered a priority area in need of reclamation has increased in recent years, to approximately 560,000 acres. Water pollution problems, such as acid drainage from old mines, have increased. And many old mines that had been abandoned before 1977 in rural, unpopulated areas now command immediate attention for reclamation as urban sprawl brings new housing developments perilously close to the dangerous, polluted mining sites. "Builders will begin developments not realizing they are in historic mine areas," Bill Guyette, a mining reclamation official in Alabama, told BNA. Guyette also is spokesman for the National Association of Abandoned Mine Land Programs, an organization of state reclamation officials.

"We have seen numerous cases where dangerous highwalls and other problems way out in the boondocks are originally classified as low-priority areas. Ten years later, those areas are near subdivisions where children are running about. Now, you've got a real problem."

Complicating matters is the fact that more than \$1.5 billion in reclamation funds collected by the federal government has not been spent, raising complaints from state regulators and environmental groups.

### **Balancing the Budget**

At first glance, the solution appears simple: Have Congress appropriate the unspent balance for its intended purpose of restoring abandoned mine lands. However, lawmakers and three successive presidents--from both major political parties-- have been reluctant to do so because of competing budgetary interests.

For nearly two centuries, there were no federal laws governing coal mining operations in the United States. In 1977, the Surface Mining Control and Reclamation Act (SMCRA) was passed by Congress to regulate active mines and address the problem of abandoned mines. The law established new health and environmental standards and required coal companies to reclaim lands after mining is completed. It also required coal companies to pay for the restoration of land abandoned prior to 1977 through the Abandoned Mine Reclamation Fund.

The taxes coal companies pay--35 cents per ton of surface-mined coal and 15 cents per ton of underground coal--are deposited in the federal government's general revenue pool, where the funds accrue interest. Although the fund cannot be spent on anything except abandoned mine cleanup activities, its designation as "on budget" allows it to be counted against spending when calculating federal surpluses or deficits. Interior's Office of Surface Mining allocates money collected by the fund through the annual budget process, where it competes with other Interior and federal programs for appropriations. As a result, reclamation funding is being held back to help balance the budget, Bush administration officials and congressional sources acknowledge.

## **Abandoned Mine Reclamation Fund**

### **Fund's Interest Used to Pay Worker Benefits**

According to the Office of Surface Mining, the reclamation fund collected approximately \$287 million in fiscal year 2002, \$82 million more than the \$205 million Congress appropriated for that year. For fiscal year 2003, the Bush administration has proposed approximately \$175 million for the fund, even though fee collections have averaged \$275 million annually in recent years.

Collecting more in taxes than it spends cleaning up abandoned mines is not a new phenomenon for the federal government. In fact, Congress has appropriated all the yearly fees collected by the fund on just three occasions: fiscal years 1983, 1985, and 1987. In all, the federal government has collected \$6.5 billion in fees since 1977, but only spent \$5 billion.

"Like all trust funds, Congress uses the abandoned mine fund to play the balance the budget game," John McCormick, spokesman for the Citizens Coal Council, a West Virginia-based environmental group, told BNA.

Another reason the balance has remained high is that the accrued interest is being used to offset the deficit in a special fund that was established to defray health care costs of retired coal workers, he said. Under a requirement of the Energy Policy Act of 1992, the Office of Surface Mining began transferring interest earned on the reclamation fund to the United Mine Workers of America Combined Benefit Fund. The federally mandated combined benefits fund, which is also financed through fees on coal operators, guarantees that retired workers will receive the same benefits they received under labor union agreements during their working years, regardless of whether their employer stays in business. Due to rising health-care costs and other factors, Congress has been forced to appropriate funds since 1994 to address shortfalls in the combined benefits fund. Approximately \$574 million in interest has been transferred from the Abandoned Mine Reclamation Fund to the combined benefits fund as of January 2002, according to the Office of Surface Mining.

The unappropriated balance of the reclamation fund will likely remain high until a long-term solution can be found to address shortfalls in the benefits fund, McCormick told BNA.

"To give all the money back to the states is to essentially abandon these miners," he said. "It's unlikely that either party in Congress or the administration would do that. [President] Bush carried West Virginia by the slimmest of margins in the last election."

In October, the House passed legislation (H.R. 3813) sponsored by Reps. Nick Rahall (D-W.Va.) and Bob Ney (R-Ohio) that would increase the amount of interest from the reclamation fund available for transfer to the benefits fund. A similar bill (S. 2637) has been introduced by Sen. Kent Conrad (D-N.D.) in the upper chamber.

### **Tax Expires in 2004**

Rahall, ranking Democrat on the House Resources Committee, is also chief sponsor of legislation to reauthorize the abandoned mine reclamation tax when it expires Sept. 30, 2004. Rahall's bill (H.R. 297) would extend the reclamation tax at current rates until 2011. However, the mining industry and representatives of Western states are seeking concessions in exchange for reauthorization of the tax. The National Mining Association is lobbying for a gradual reduction and would like to see an eventual phaseout of the tax.

"The Mining Association supports the abandoned mine land program objective of restoring lands abandoned or left inadequately restored," spokesman Tom Johnson told BNA. "However, we are concerned that a small and shrinking percentage of the fees collected are being used for actual reclamation of high priority sites, which is what Congress envisioned what it enacted SMCRA."

Environmental groups and state regulators concede the industry position has been bolstered by the fact that the taxes collected have not been fully used for their intended purpose. A number of lawmakers, particularly those from Western states, favor restructuring the tax. "There needs to be an end game," Jack Belcher, an aide to Rep. Barbara Cubin (R-Wyo.), told BNA. "This tax was not meant to be an indefinite burden on the coal mining industry. At some point, it needs to be phased out."

Cubin, chairman of the House Resources Subcommittee on Energy and Mineral Resources, recently sponsored a nonbinding resolution (H. Con. Res. 425) calling for full appropriation of the state and tribal shares of the abandoned mine reclamation fund. The resolution passed the House by voice vote in October.

Yet, neither the Rahall bill nor the resolution sponsored by Cubin addresses the core of industry's argument: that funds should be spent on abandoned sites that are most in need of the money. In fact, under the current funding formula, states that do not need the money are guaranteed a certain amount of funds each year anyway.

### **How the Fund Works**

SMCRA stipulates that 50 percent of the reclamation funds collected within each state or Indian tribal territory be allocated to that state or tribe. State reclamation programs, which are approved by the Office of Surface Mining, have control over how and where the money is spent. The remaining 50 percent, known as the federal share, is used to fund high-priority and emergency projects carried out by the federal Abandoned Mine Land Reclamation Program. The federal share funds additional state projects through the Appalachian Clean Streams Program and other Office of Surface Mining initiatives. The fund also pays for federal administrative costs, as well as another program that helps small mine operators meet environmental standards.

As of September 2002, the unappropriated balance of the fund was \$1.53 billion. The federal share of the fund was \$590 million, and the amount owed to the states was approximately \$945 million. Cubin's home state of Wyoming accounts for nearly half of the collections deposited in the Abandoned Mine Reclamation Fund, but has far fewer abandoned sites than Eastern states such as West Virginia, Kentucky, and Pennsylvania. Most of the growth in Wyoming's coal sector occurred after 1977, when SMCRA was passed. In the early 1990s, the state surpassed West Virginia as the nation's biggest coal producer. "They're the Daddy Warbucks of the abandoned mine land program," McCormick said. "Yet, they have few, if any pre-1977 sites in need of reclamation."

### **Wyoming Seeks its Share of Balance**

Under the current formula, Wyoming is owed nearly \$355 million, more than one-third of the amount owed to states from the abandoned mine fund. In 2002, the state was allocated \$28 million, much more than what is actually needed for restoring abandoned mines there.

Because some states could tap more money than was needed for reclamation under the funding formula enacted in 1977, Congress amended SMCRA in 1990 to allow funding to be used for infrastructure projects in coal producing regions, such as roads and water facilities. Although Wyoming completed the bulk of its reclamation work in the 1980s, the state has been active in seeking its full share of abandoned mine funding.

"When someone hands you a check for \$28 million, it is pretty easy to smile and say, 'Thank you,' " Sen. Mike Enzi (R-Wyo.) said after the state received its 2002 share of funding from the Office of Surface Mining. "But in this case, it's also a chance to ask, 'Where's the rest?' "

Lawmakers from Western states say full appropriation of the existing balance should be included in legislation reauthorizing the fund. "First and foremost, the state needs to get what it was promised under SMCRA. ... We will be working to a compromise that addresses these and other issues," Belcher, the aide to Cubin, said.

### **Structural Changes Sought**

States such as Wyoming and environmental groups would also like to see a provision in the reauthorization that automatically appropriates funds each year based on tax collections from the previous year. The National Association of Abandoned Mine Land Programs recently passed a policy resolution supporting extension of the tax. "It took a little prompting, but Wyoming agreed to sign onto our policy resolution, as long as it contained a provision calling for full appropriation of the unspent balance," Guyette told BNA.

"If fully appropriated, 10-year extension of the current tax would take care of about 80 percent of the nation's abandoned mine problems," he said. "Some people are calling for a 50 percent reduction, but the association would like to see the tax continue at current levels. Thirty-five cents per ton of coal is not as much as it was 20 years ago."

Office of Surface Mining spokesman Mike Gauldin said the government will likely announce its position on reauthorization in the coming year, as Congress holds hearings on the matter. He said federal mining officials have already met with lawmakers, industry and environmental groups, and other

stakeholders. The Office of Surface Mining declined comment on what should be done with the current unspent balance in the reclamation fund. However, the office recently acknowledged the problem in a report to Congress.

"The total magnitude of the problem, which is found nationwide, is unknown," the office said in its *Fiscal Year 2003 Annual Performance Plan* "What we know is that the costs to reclaim known problems far exceed the resources of the abandoned mine land program."

"What is important to the public is that the abandoned mine land program address these problems as quickly as possible so that we can all live in a safer and cleaner environment," the report said.

## **State/Tribal Shares of Abandoned Mine Fund**

### **More Water Pollution Problems Listed**

The Office of Surface Mining maintains an inventory of abandoned mine sites. The inventory--based mostly on information submitted by state programs--lists the type and extent of mine problems, as well as the costs associated with reclamation.

As of 2001, the most recent year for which figures are available, the office estimates nationwide cleanup costs at \$8.8 billion, although a number of variables regarding what sites are eligible could push the estimate well beyond that figure. The most serious problems, those that pose threats to public health, safety, or welfare, are listed as Priority 1 and Priority 2, and are commonly referred to as "high-priority" problems. Abandoned mine problems that endanger the environment, but not public health, are classified as Priority 3 problems. SMCRA requires the abandoned mine land program to concentrate its efforts on Priority 1 and Priority 2 areas. However, there has been increasing debate over whether certain Priority 3 environmental problems should be included as "high priority" because of potential human and economic impacts.

In 1994, the Office of Surface Mining began notifying states that water pollution problems caused by acid mine drainage could be listed as high priority in the inventory. In fact, the Clinton administration encouraged states to include acid mine drainage problems found to have "adverse economic impacts" on communities.

"Under the change, acid problems that resulted in the elimination of fish from a stream, but did not involve a health issue since it was not a drinking water source, could be looked at as to whether the loss of tourist dollars was impacting the community. If so, it could be a Priority 2 problem," Robert Uram, former director of the Office of Surface Mining, told Pennsylvania officials in a December 1994 letter.

Acid mine drainage occurs when rainwater comes into contact with pyrite in coal and surrounding rock. The runoff is usually high in acidity and heavy metals, such as iron, manganese, and aluminum, which contaminate streams and rivers. Pennsylvania, the nation's fourth-largest coal producer, estimates that more than half of its streams and rivers do not meet water quality standards because of acid mine drainage. Although the problem is common throughout much of the Appalachian coal mining region, Pennsylvania was the only state to take federal officials up on the offer to list more acid mine drainage problems as high priority. Acid mine drainage problems Pennsylvania added to the inventory now account for approximately \$3.5 billion of the \$8.8 billion needed to reclaim priority 1, 2, and 3 sites

nationwide, according to the Office of Surface Mining. Pennsylvania officials have estimated that the total acid mine drainage problem in the state is much more severe and could cost as much as \$15 billion to remediate.

### **Rahall, Industry Oppose Pennsylvania Move**

Rahall and the mining industry, however, are not happy with the state's decision to list more acid mine drainage problems in the Office of Surface Mining inventory. If other states followed suit, the inventory would be overwhelmed with such problems and the fund would be unable to address human health and safety problems for which it was originally intended, they argue.

Opponents have argued that Pennsylvania move could take resources away from treating other abandoned mine land problems, such as waste piles, dangerous highwalls and embankments, open shafts, subsidence or sinking ground, and water pollution that affect drinking water supplies. Rahall's reauthorization proposal would repeal SMCRA language that allows the abandoned mine reclamation fund to be used for problems that impact "the general welfare," a move that would essentially nullify Pennsylvania's inclusion of more acid mine drainage sites. Rahall said the bill targets a greater portion of available resources to the most pressing public health and safety problems. As a salve to Pennsylvania, he included a provision that allow states to use 10 percent of the abandoned mine land funding specifically for acid mine drainage. The reauthorization would also allows states to use funding for reservoirs and water supply systems in areas affected by acid mine drainage.

McCormick of the Citizens Coal Council told BNA that Pennsylvania lawmakers will likely oppose Rahall's bill, a move that would add an interesting component to the East versus West battle currently brewing.

"They [Western lawmakers] never liked the idea of sending their money east in the first place," McCormick said. "The fact that it hasn't been spent on reclamation gives coal operators in their states a valid argument that restructuring of the fund is needed."

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